

Message Text

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ACTION EB-07

INFO OCT-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 IO-13 ISO-00

USIE-00 L-03 FRB-03 OMB-01 ITC-01 SP-02 AGR-05 AID-05

CIAE-00 COME-00 INR-07 LAB-04 NSAE-00 OIC-02 SIL-01

STR-04 TRSE-00 CIEP-01 CEA-01 SS-15 NSC-05 SSO-00

NSCE-00 INRE-00 /124 W

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O 131545Z MAY 76

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC IMMEDIATE 0000

INFO USMISSION GENEVA IMMEDIATE

LIMITED OFFICIAL USE SECTION 1 OF 2 NAIROBI 4905

DEPT PASS TO PATENT OFFICE - MIKE KIRK

GENEVA FOR HARVEY WINTER

E.O. 11652: N/A

TAGS: UNCTAD

SUBJECT: UNCTAD; INDUSTRIAL PROPERTY SYSTEM

REF: (A) STATE 116900, (B) NAIROBI 4858

1. REF (A) RECEIVED MIDDAY OM MAY 13. GROUP B, WHICH UNANIMOUSLY AND STRONGLY SUPPORTS WORKING PAPER QUOTED IN REF (A), FACED DEADLINE WHICH REQUIRED SUBMISSION THIS MORNING. THUS, WE DID NOT HAVE OPPORTUNITY TO ATTEMPT TO ACHIEVE MODIFICATIONS SUGGESTED IN REF (A). ONE CHANGE MADE AT OUR SUGGESTION WAS DELETION OF LAST THREE LINES OF PREAMBULAR PARAGRAPH 6 REFERRING TO "A NEW ECONOMIC ORDER". WITH THIS CHANGE, GROUP B PAPER HAS

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BEEN SUBMITTED. IF OPPORTUNITY ARISES TO MAKE OTHER

PROPOSED CHANGES IN REFTTEL (B), US DEL WILL DO SO.

2. ON AFTERNOON OF MAY 13 GROUP OF 77 SUBMITTED DRAFT
RESOLUTION ON THE PATENTS QUESTION WHICH IS AS FOLLOWS:
QUOTE: THE UNITED NATIONS CONFERENCE ON TRADE AND
DEVELOPMENT,

RECALLING GENERAL ASSEMBLY RESOLUTION 3362(S-VIII)
ADOPTED ON 16 SEPTEMBER 1975 WHICH, IN PARAGRAPH 3 OF
PART III, STATES: "INTERNATIONAL CONVENTIONS ON PATENTS
AND TRADEMARKS SHOULD BE REVISED AND REVISED, TO MEET,
IN PARTICULAR, THE SPECIAL NEEDS OF THE DEVELOPING
COUNTRIES, IN ORDER THAT THESE CONVENTIONS MAY BECOME
MORE SATISFACTORY INSTRUMENTS FOR AIDING DEVELOPING
COUNTRIES IN THE TRANSFER AND THE DEVELOPMENT OF
TECHNOLOGY. NATIONAL PATENTS SYSTEMS SHOULD, WITHOUT
DELAY, BE BROUGHT IN LINE WITH INTERNATIONAL PATENT
SYSTEM IN ITS REVISED FORM,"

RECALLING ALSO RESOLUTION 3(I) OF THE COMMITTEE ON
TRANSFER OF TECHNOLOGY, ADOPTED ON 5 DECEMBER 1975,
NOTING WITH SATISFACTION THE DECLARATION ON THE OB-
JECTIVES OF THE REVISION OF THE PARIS CONVENTION AS SET
OUT IN THE REPORT OF THE SECOND SESSION OF WIPO'S AD
HOC GROUP OF GOVERNMENTAL EXPERTS ON THE REVISION OF THE
PARIS CONVENTION,

BEARING IN MIND THE PROPOSALS MADE BY THE GROUP OF 77
IN THE MANILA DECLARATION AND PROGRAMME OF ACTION AS
WELL AS THE CONCLUSIONS OF EXPERTS FROM DEVELOPING
COUNTRIES ON THE ROLE OF THE PATENT SYSTEM IN THE TRANSFER
OF TECHNOLOGY TO DEVELOPING COUNTRIES AS CONTAINED
IN DOCUMENT TB/B/593, ANNEX III,

(1.) REAFFIRMS THAT, AS RECOMMENDED IN RESOLUTION 3(I)
OF THE COMMITTEE ON TRANSFER OF TECHNOLOGY ADOPTED ON
5 DECEMBER 1975, "THE PROCESS OF REVISION OF THE PARIS
CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY,
AS WELL AS OF THE MODEL LAW FOR DEVELOPING
COUNTRIES ON INVENTIONS, SHOULD TAKE FULL ACCOUNT OF
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THE RESPONSIBILITIES AND COMPETENCES OF WIPO AND UNCTAD
AND SHOULD BE GUIDED, INTER ALIA, BY THE FOLLOWING
CONSIDERATIONS:

(A) THE NEED TO IMPROVE THE CONDITIONS FOR ADAPTION
OF TECHNOLOGY AND FOR DEVELOPMENT OF INDIGENOUS TECH-
NOLOGY IN DEVELOPING COUNTRIES THROUGH, INTER ALIA,
THE TRAINING OF PERSONNEL AND THE PROVISION OF ACCESS

TO RELEVANT DOCUMENTATION;

(B) THE NEED TO PROMOTE AN EFFECTIVE TRANSFER OF TECHNOLOGY TO THOSE COUNTRIES UNDER FAIR AND REASONABLE TERMS AND CONDITIONS;

(C) THAT THE IMPORTATION OF THE PATENTED PRODUCT IS NOT AS A GENERAL RULE A SUBSTITUTE FOR THE WORKING OF THE PATENT IN THE DEVELOPING COUNTRY GRANTING IT;

(D) THAT MORE ADEQUATE PROVISIONS ARE REQUIRED TO AVOID ABUSES OF PATENT RIGHTS AND TO INCREASE THE PROBABILITY OF PATENTS BEING WORKED IN THE DEVELOPING COUNTRY GRANTING THEM;

(E) THAT THE INTRODUCTION OF FORMS OF PROTECTION OF INVENTIONS OTHER THAN TRADITIONAL PATENTS (E.G., INVENTORS' CERTIFICATES, INDUSTRIAL DEVELOPMENT PATENTS, AND TECHNOLOGY TRANSFER PATENTS) SHOULD BE EXAMINED;

(F) THAT THE NEED FOR TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES IN THE FIELD OF INDUSTRIAL PROPERTY, AND IN PARTICULAR FOR EXPANDED ACCESS TO AND UTILIZATION OF PATENT DOCUMENTATION BY DEVELOPING COUNTRIES, IN ORDER TO FACILITATE THE TRANSFER, ABSORPTION, ADAPTION AND CREATION OF SUITABLE TECHNOLOGY, SHOULD BE RECOGNIZED;

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O 131545Z MAY 76
FM AMEMBASSY NAIROBI
TO SECSTATE WASHDC IMMEDIATE 0000
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DEPT PASS TO PATENT OFFICE - MIKE KIRK

GENEVA FOR HARVEY WINTER

(G) THAT AN IN-DEPTH REVIEW OF THE PROVISIONS ON
TRADEMARKS SHOULD BE CARRIED OUT;

(H) THAT THERE SHOULD BE NEW AND IMAGINATIVE STUDIES
OF POSSIBILITIES OF GIVING PREFERENTIAL TREATMENT TO ALL
DEVELOPING COUNTRIES;

(I) THAT AN ULTIMATE AIM OF THE ON-GOING PROCESS OF
REVISION SHOULD BE TO PROVIDE REASONABLE CONDITIONS FOR
UNIVERSAL MEMBERSHIP IN THE PARIS UNION";

(2.) AGREES THAT THE 'DECLARATION ON THE OBJECTIVES OF
THE REVISION OF THE PARIS CONVENTION', ADOPTED BY
WIPO'S AD HOC GROUP OF GOVERNMENTAL EXPERTS ON THE
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REVISION OF THE PARIS CONVENTION AT ITS SECOND SESSION
HELD IN GENEVA FROM 15-22 DECEMBER 1975, SHOULD GUIDE
THE REVISION OF THE PARIS CONVENTION AND BE FULLY
REFLECTED IN ITS SUBSTANTIVE PROVISIONS;

(3.) CONSIDERS THAT THE CONCLUSIONS REACHED BY THE
EXPERTS FROM DEVELOPING COUNTRIES WHO PARTICIPATED
IN THE MEETING OF THE GROUP OF GOVERNMENTAL EXPERTS ON
THE RULE OF THE PATENT SYSTEM IN THE TRANSFER OF
TECHNOLOGY TO DEVELOPING COUNTRIES SHOULD BE ONE OF THE
BASES FOR SUBSEQUENT NEGOTIATIONS;

(4.) RECOMMENDS THAT IN VIEW OF THE IMPORTANCE ATTACHED
BY THE DEVELOPING COUNTRIES TO THE ECONOMIC, SOCIAL AND
DEVELOPMENT IMPLICATIONS WHICH THE INTERNATIONAL
SYSTEM OF INDUSTRIAL PROPERTY HAS FOR THEIR
ECONOMIC, UNCTAD WITHIN ITS SPHERE OF COMPETENCE SHOULD
PLAY A PROMINENT ROLE IN THE REVISION OF THE SYSTEM, IN
PARTICULAR IN THE ONGOING PROCESS OF REVISION OF THE PARIS
CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

THAT ROLE SHOULD INCLUDE THE PARTICIPATION OF UNCTAD IN ALL PHASES OF THE REVISION PROCESS;

(5.) DECIDES THAT, AS RECOMMENDED IN THE ABOVE-MENTIONED RESOLUTION 3(I) OF THE COMMITTEE ON TRANSFER OF TECHNOLOGY, THE SECRETARY-GENERAL OF UNCTAD SHOULD "CONTINUE DEVELOPING UNCTAD'S ACTIVITIES IN PROVIDING ITS IMPORTANT CONTRIBUTION ON THE FUNCTION OF THE INTERNATIONAL PATENT SYSTEM IN THE TRANSFER OF TECHNOLOGY AND THE MAIN LINES OF ITS REVISION, RELATED TO ECONOMIC, COMMERICAL AND DEVELOPMENTAL ASPECTS";

(6.) REAFFIRMS FURTHER THAT TECHNICAL ASSISTANCE ON AN INCREASING SCALE IS URGENTLY NECESSARY AND SHOULD BE PROVIDED TO DEVELOPING COUNTRIES BY UNCTAD, UNIDO, AND WIPO, THROUGH RESOURCES AS APPROPRIATE, FROM BUDGETARY PROVISIONS, EXTRA-BUDGETARY PROVISIONS OR OTHER SOURCES, WITHIN THEIR RESPECTIVE SPHERES OF COMPETENCE AND IN A CLOSELY CO-ORDINATED MANNER, FOR THE DEVELOPMENT OF THE NATIONAL CAPABILITY AND INFRASTRUCTURE OF THESE COUNTRIES, WITH REGARD TO INDUSTRIAL LIMITED OFFICIAL USE

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PROPERTY AS A MEANS OF PROMOTING NATIONAL TECHNOLOGICAL DEVELOPMENT. UNQUOTE.

3. AT FIRST GLANCE, OUR REACTION IS THAT FIRST TWO PREAMBULAR PARAGRAPH TO THE PREAMBLE ARE ACCEPTABLE AND PARAGRAPH 3 SHOULD BE GUIDED BY REFTEL (A).

4. OPERATIVE PARA 1, WHICH QUOTES THE RESOLUTION OF THE UNCTAD COMMITTEE ON TRANSFER OF TECHNOLOGY APPEARS ACCEPTABLE.

5. OPERATIVE 2 IS CLEARLY UNACCEPTABLE FOR THE REASONS STATED IN REFTEL (A) AND THE POSITION PAPERS. WE WOULD INITIALLY PLAN TO GO NO FURTHER THAN THE LANGUAGE OF THE GROUP B PAPER -- IF FOR NO OTHER REASON, WIPO DECLARATION CANNOT APPEAR IN OPERATIVE RESOLUTION OF UNCTAD.

6. OPERATIVE 3 IS UNACCEPTABLE FOR REASONS STATED IN THE POSITION PAPER.

7. OPERATIVE 4 HAS OBVIOUS PROBLEMS RELATED TO THE "PROMINENT" ROLE OF UNCTAD AND THE "PARTICIPATION OF UNCTAD IN ALL PHASES OF THE REVISION PROCESS."

8. OPERATIVES 5 AND 6 APPEARS TO BE ACCEPTABLE, SINCE THEY ARE ESSENTIALLY IDENTICAL TO THE LANGUAGE FROM THE

RESOLUTION OF THE COMMITTEE ON TRANSFER OF TECHNOLOGY.

9. WE WOULD APPRECIATE ANY GUIDANCE ON SUGGESTED
LANGUAGE CHANGES TO THE G-77 DRAFT WHICH ADD TO THE
ABOVE PRELIMINARY THOUGHTS OF THE USDEL. GUIDANCE SHOULD
BE SENT NO LATER THAN COB WASHINGTON TIME FRIDAY, MAY 14.
MARSHALL

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